

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DARRYL WATSON,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 06-0883
	:	
CITY of PHILADELPHIA, et al.	:	
Defendants.	:	

MEMORANDUM

STENGEL, J.

August 22, 2006

Pro se plaintiff Daryl Watson brings this civil rights cause of action more than two years after resigning from his position as a correctional officer for the defendants.

Following a Rule 16 conference with the parties, defendants moved this Court to dismiss plaintiff's case based upon the applicable statute of limitations. For the reasons set out below, I will grant defendants' motion and dismiss all of plaintiff's claims.

I. BACKGROUND

While employed as a Correctional Lieutenant at the Philadelphia Detention Center, *pro se* plaintiff Daryl Watson received three phone calls at his home, made via a third-party, from an inmate at the Philadelphia Detention Center. All three phone calls, made on May 3, May 13, and June 11, 2003, were recorded by the Philadelphia Detention Center. On July 30, 2003, Watson was questioned by the Philadelphia Prisons Internal Affairs Division about the content of the phone calls. Approximately twenty-two days later, Watson received an Employee Disciplinary Report based in part upon the recorded phone calls. On November 6, 2003, Watson attended a Disciplinary Hearing where part

of the recorded phone calls were played. After hearing the recorded calls, Watson voluntarily resigned.

On February 28, 2006, Watson attempted to initiate this case by filing a motion to proceed in *forma pauperis*. Following the Court's March 8, 2006, denial of that motion, Watson paid the filing fee and entered his complaint on March 13, 2006. The four count complaint names the City of Philadelphia, Commissioner Leon King, and Deputy Commissioner Elsa Legesse as defendants for allegedly: (1) violating state and federal wiretap statutes; (2) subjecting Watson to cruel and unusual punishment; (3) creating a custom or policy of violating one's constitutional rights; and (4) for intentional infliction of emotional distress.

On April 11, 2006, a default judgment was entered on behalf of Watson after the defendants failed to timely answer his complaint. After making specific findings in accordance with FED. R. CIV. P. 55(c), the Court then set aside the default judgment and accepted defendants' answer to Watson's complaint filed on April 12, 2006.

On July 11, 2006, defendants filed the current Motion for Judgment on the Pleadings arguing that all of plaintiff's claims are barred by the applicable statute of limitations, and in the alternative, by qualified immunity. On August 4, 2006, Watson responded to the motion.

II. JUDGMENT ON THE PLEADINGS STANDARD

Defendants move this Court pursuant to FED. R. CIV. P. 12(c). In pertinent part, the statute states: “After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” FED. R. CIV. P. 12(c).

In ruling on a motion for judgment on the pleadings, the trial court is “required to view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to plaintiff, the non-moving party.” Inst. for Scientific Inf. v. Gordon & Breach, 931 F.2d 1002, 1004 (3d Cir. 2001) (internal citations omitted). Stated differently, a motion for judgment on the pleadings will only be granted if plaintiff “would not be entitled to relief under any set of facts that could be proved consistent with the complaint[’s] allegations.” Oxford Assocs. v. Waste Sys. Auth., 271 F.3d 140, 144-45 (3d Cir. 2001) (internal quotations omitted). Furthermore, a defendant may properly raise a statute of limitations defense through a motion for judgment on the pleadings. See Sikirica v. Nationwide Ins. Co., 416 F.3d 214, 224-26 (3d Cir. 2005) (affirming district court’s grant of judgment on the pleadings based upon the applicable statute of limitations).

III. DISCUSSION

A. Plaintiff’s Claims are Barred by the Statute of Limitations

Claims of constitutional violations are governed by state statute of limitations for personal injury claims. See Wilson v. Garcia, 471 U.S. 261 (1985); Pratt v. Thornburg,

807 F.2d 355, 357 (3d Cir. 1986). In Pennsylvania, a plaintiff must bring a cause of action within two years of the injury giving rise to the alleged violations. 42 Pa.C.S.A. § 5524 (2005). Plaintiff's § 1983 claims, like the other federal constitutional claims are also governed by Pennsylvania's two-year statute of limitations. Smith v. City of Philadelphia, 764 F.2d 188, 194 (3d Cir. 1985), cert. denied, 474 U.S. 950 (1985) (appropriate statute of limitations period for §1983 actions is two years in Pennsylvania). See also Colbert v. City of Philadelphia, 931 F. Supp. 389, 391 (E.D.Pa. 1996) (finding §1983 claims are subject to two-year statute of limitations). In addition, Watson's claims pursuant to the Pennsylvania and Federal wiretap statutes, as well as his claims for intentional infliction of emotional distress, are subject to a two-year statute of limitations. 18 Pa.C.S.A. § 5747(c); 18 U.S.C. § 2520(e); Bougher v. Univ. of Pittsburgh, 882 F.2d 74 (3d Cir. 1989).

In Pennsylvania a cause of action in tort accrues on the date of the injury. Bruffett v. Warner Communications, Inc., 534 F. Supp. 375, 377 (E.D.Pa. 1982), aff'd, 692 F.2d 910 (3d Cir. 1982). "It is axiomatic that under federal law, which governs the accrual of section 1983 claims, the limitation period begins to run from the time when the plaintiff knows or has reason to know of the injury which is the basis of the section 1983 action." Montgomery v. DeSimone, 159 F.3d 120, 126 (3d Cir. 1998) (internal quotations omitted).

In this case, the alleged actions giving rise to Watson's claims occurred, at the very latest, during the November 6, 2003, disciplinary hearing. At that time, Watson knew the May and June phone calls were recorded and all of the actions allegedly giving rise to his intentional infliction of emotional distress took place at that meeting. In order to avoid being barred by the statute of limitations, Watson therefore had to have commenced his suit no later than November 6, 2005. Watson failed to meet that deadline.

B. Watson's Involvement in Another Case Did Not Toll the Statute of Limitations

Watson's response to the defendant's motion argues, *inter alia*, that the applicable statute of limitations should be tolled as both parties were previously named as defendants in another case.¹ This argument, however, fails to state any reason, or provide any legal basis, why the other case prevented Watson from filing the present cause of action. Viewing all of Watson's pleadings as true, and drawing all factual inferences in his favor, there is no reason to toll the applicable statute of limitations. Furthermore, and in consideration of Watson proceeding *pro se*, I cannot construe the facts in any way as to allow Watson's cause of action to toll the statute of limitations. Watson knew his previous phone calls were recorded by, at the very latest, the November 6, 2003 disciplinary hearing when they were played in front of him. Thus the statute of

¹See Talia Thornton v. City of Philadelphia, et al., 04-cv-2536, 2005 U.S. Dist. Lexis 24477 (E.D. Pa. Oct. 30, 2005). Plaintiff Talia Thornton filed a Monell claim against the City of Philadelphia after allegedly being raped by defendant Daryl Watson while an inmate in the Philadelphia Detention Center.

limitations for any cause of action arising from the phone calls being recorded began to run on that date.

C. Claims Barred by The Political Subdivision Tort Claims Act

In addition to arguing that Watson's claims are time-barred, defendants further argue that 42 Pa C.S.A. § 8541, *et seq.*, prevents defendants from being held liable for Watson's state tort claims as a matter of law. Although this argument has merit, because I will dismiss plaintiff's claims on statute of limitations grounds it is not necessary to fully address the immunity issues.

IV. CONCLUSION

All of plaintiff's claims are barred by the applicable statute of limitations and his case will be dismissed accordingly.

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ORDER

AND NOW, this 22nd day of August, 2006, upon consideration of defendants' Motion for Judgment on the Pleadings (Docket # 16), and plaintiff's response thereto, it is hereby **ORDERED** that the Motion is **GRANTED**. Plaintiff's case is dismissed.

The Clerk of Court shall mark this case closed for all purposes.

BY THE COURT:

s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.